

Supreme Court Directive on Capital Cause Appeal Procedures

Directive #6-89
Issued by:

April 5, 1989
Supreme Court of New Jersey

The following procedures apply to appeals of capital causes and supersede the general provisions of the Rules of Court governing appeals.

An appeal shall be taken in all cases in which there is a judgment of conviction of murder and a sentence of death pursuant to *N.J.S.A. 2C:11-3(c)*. In all such capital causes, appeals from the final judgment of conviction and sentence and all post-conviction appeals shall be taken directly to the Supreme Court pursuant to *R. 2:2-1(a)(3)*. Appeals from the final judgment of conviction for murder and sentence of death shall include all other convictions and sentences resulting from charges that were prosecuted in the trial of the capital cause.

The following procedures shall apply to direct appeals from final judgments of conviction for murder and sentence of death and to all appeals from post-conviction proceedings relating to such judgments of conviction and death sentences.

1. Not later than two days from the imposition of the sentence of death, the trial court shall transmit a copy of the judgment and sentence to the Clerk of the Supreme Court and a copy to each of the parties. The transmittal to the Clerk of the copy of the final judgment of conviction and sentence of death shall constitute the initiation of the appeal.
2. Within ten days of the imposition of the sentence of death, the trial court shall transmit to the Clerk of the Supreme Court and to the parties a Case History that includes:
 - (a) A list in chronological order of all proceedings for which transcripts must be prepared; and
 - (b) A list of all exhibits introduced at the proceedings together with all documentary exhibits enumerated on the list.

All physical exhibits that were introduced at trial shall be retained by the State, subject to further order of the Supreme Court.

3. On receipt of the copy of the judgment and sentence, the Clerk of the Supreme Court shall docket defendant's appeal and shall assign a docket number and notify the parties, the trial court, the Attorney General, and the Department of Corrections that the appeal has been docketed.
4. On receipt of notification that the appeal has been docketed,
 - (a) the defense attorney of record shall forthwith furnish to the Clerk and serve on the State a formal Notice of Appeal, which shall include the name of the attorney or attorneys who will represent defendant on the appeal;
 - (b) the prosecuting attorney of record shall forthwith furnish to the Clerk and serve on the trial defense attorney the name of the attorney or attorneys who will represent the State on the appeal;
 - (c) if the Attorney General does not represent the State on the

appeal, the Attorney General shall forthwith inform the Clerk whether the Attorney General shall seek leave to participate in the appeal as *amicus curiae*, and if so, the Attorney General shall promptly move to participate in the appeal as *amicus curiae* and shall designate the name of the attorney or attorneys who will represent the Office of the Attorney General.

5. On receipt of the notification that the appeal is docketed, the defense attorney of record shall order all transcripts in accordance with *R. 2:5-3(a)* to be prepared on an expedited basis. Unless both parties stipulate otherwise, the transcripts that are ordered shall include opening and closing statements, jury voir dire examinations, and legal arguments of counsel. Appropriate Transcript Order Forms, including any stipulations by counsel, shall be completed and filed within five days of the receipt of the Case History data.
6. Within fourteen days of the completion of the transcripts by all court reporters, the defense attorney shall file, pursuant to *R. 2:6-12(d)*, three copies of the transcript with the Clerk of the Supreme Court. The Court, through the Clerk, may direct the filing of an incomplete record if circumstances warrant it.
7. Within fourteen days of the filing of the Notice of Appeal, the defense attorney shall file with the Clerk and serve on the State's attorney a preliminary case information statement. The preliminary case information statement shall contain information sufficient to enable the Court to determine at the earliest opportunity the complexity of the appeal and the time periods that will be required in order to perfect the appeal. Such statement shall include (a) the dates and duration of the trial; (b) the dates and duration of all pretrial proceedings; (c) the estimated length of the record on appeal; (d) the items comprising the appendix; and (e) a specification of issues expected to be presented on the appeal, which, if necessary, may be based on information supplied by defendant's trial attorney.
8. Within five days of the filing of defense attorney's preliminary case information statement, the attorney for the State shall file the State's preliminary case information statement with the Clerk and shall serve a copy on the defense attorney. The State's statement shall include (a) the State's agreement or disagreement with any matters set forth in defendant's statement, including the specification of issues expected to be presented on appeal, and (b) any additional matters deemed relevant to the appeal.
9. On receipt of the preliminary case information statements of the attorneys, the Clerk shall enter a preliminary appeal calendar, which shall constitute an initial case scheduling order. This shall specify the dates on which (a) transcripts must be filed; (b) the record shall be completed; (c) an appeal management conference shall be scheduled between all appellate attorneys and a Court representative, which date shall be approximately three weeks after the date set for

completion of the record; and (d) a tentative schedule for the filing of briefs. Revised statements of issues and recommendations for briefing schedules may be filed with the Clerk no later than one week before the conference.

10. The appeal management conference shall be conducted on the date set forth in the preliminary appeal calendar and shall be attended by all appellate attorneys and a Court representative. The Court shall direct the Clerk to enter a final appeal calendar that establishes a peremptory briefing schedule and oral argument date.
11. Appellate attorneys shall be obligated to meet the schedules set forth in the Final Appeal Calendar and to respond promptly to all interim requests for information on the progress of brief preparation.
12. Relaxation of the dates shall be permitted only in extraordinary circumstances on application to the Supreme Court.

EDITOR'S NOTE

No change has been made to the original text.